

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

INDYMAC BANK, F.S.B.,
a Federal Savings Bank,

Plaintiff,

v.

GANESAN VISVABHARATHY, an
individual

Defendant.

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No. 07 C 6226

Judge Joan B. Gottschall

MOTION TO EXTEND TIME FOR RESPONSE TO PLAINTIFF'S SUR-REPLY

Defendant, Ganesan Visvabharathy, moves for an Order extending the time for his response to the Sur-reply filed by plaintiff, Indymac Bank, F.S.B. ("Indymac") regarding defendant's Motion to Vacate Order of Default and Quash Service. In support of his motion, Dr. Visvabharathy states as follows:

1. On April 3, 2008, the parties appeared before the Court on Indymac's Motion to File *Instante* its Sur-reply to Defendant's Reply regarding his Motion to Vacate Order of Default and Quash Service. The Court granted the motion to file *instante*. However, Indymac's Sur-reply itself raises numerous new issues, so the Court granted Dr. Visvabharathy leave to respond and, at counsel's request, gave him 14 days (until April 17, 2008) to do so.

2. At the time that counsel requested that date, he neglected to recall that April 17 is the day prior to a major summary judgment argument he has in another matter, pending in Illinois Circuit Court, *Downs v. Rosenthal Collins Group, LLC, et al.*, No. 04 CH 11729. (Mar. 21, 2008 Order, attached as Exhibit A). This hearing is on two summary judgment motions in a complex matter involving, *inter alia*, a disputed ownership interest in a futures commodities trading firm, and requires extensive preparation, which will interfere with counsel's ability to complete the response to Indymac's Sur-reply as currently scheduled.

3. In addition, there is an evidentiary hearing on whether Indymac effectively served Dr. Visvabharathy in a related action, *Indymac Bank, F.S.B. v. Visvabharathy, et al.*, No. 07 C 6224 (Guzman, J.), (which is based on the same purported act of service that is at issue here), set for April 15, 2008. (Mar. 17, 2008 Order, attached as Exhibit B). The preparation for that hearing precludes counsel from simply completing defendant's response to the Sur-reply earlier than scheduled.

4. Under the circumstances, counsel would ordinarily seek an extension of only seven days. However, on April 24, counsel will be observing the Jewish religious holiday of Passover (which runs from April 20-27). Accordingly, defendant requests that the Court grant an extension of 14 days, until May 1, 2008, to file his response to plaintiff's Sur-reply.

5. Defendant's counsel has consulted with plaintiff's counsel regarding his request, but plaintiff's counsel has indicated that they oppose it. (April 9, 2008 email from James Martignon, Indymac's counsel, attached as Exhibit C).

WHEREFORE, for the above reasons, defendant Ganesan Visvabharathy respectfully requests that this Court enter an Order extending defendant's time to file his response to plaintiff Indymac Bank, F.S.B.'s Sur-reply until May 1, 2008, and awarding such other and further relief as the Court deems proper.

Respectfully submitted,

GANESAN VISVABHARATHY

By: /s/ Daniel A. Shmikler
One of his attorneys

Bruce S. Sperling
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EXHIBIT A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Downs

v.

RCGNo. 04 CH 11729

ORDER

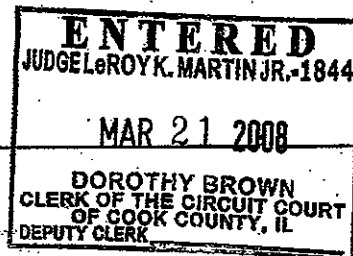
THIS MATTER HAVING BEEN PRESENTED TO THE COURT, WITH DUE NOTICE AND THE COURT FULLY ADVISED ON THE PREMISES, IT IS HEREBY ORDERED:

DOWNS' MOTIONS FOR SUMMARY JUDGMENT ARE SET FOR HEARING ON APRIL 18, 2008 AT 10:30 AM.

Atty. No.: 22288Name: MICHAEL DICKLER / SPERLING + SCARFAtty. for: PLAINTIFF / CounterdefendantAddress: 55 W. Monroe St Ste 3200City/State/Zip: CHICAGO, IL 60603Telephone: (312) 641-3200

ENTERED:

Dated: _____



Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

EXHIBIT B

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 3.1.3
Eastern Division**

Indymac Bank, F.S.B.

Plaintiff,

v.

Case No.: 1:07-cv-06224

Honorable Ronald A. Guzman

Ganesan Visvabharathy, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, March 17, 2008:

MINUTE entry before Judge Honorable Ronald A. Guzman: Evidentiary Hearing regarding service set for 4/15/2008 at 10:30 AM.Mailed notice(cjg,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

EXHIBIT C

Daniel Shmikler

From: James G. Martignon [jmartignon@lplegal.com]
Sent: Wednesday, April 09, 2008 11:55 AM
To: Daniel Shmikler
Cc: Gary I. Blackman
Subject: RE: Indymac/Vish sur-sur-reply

Dan - following up on our conversation and your message, we do not have authority to agree to a continuance and are opposed to the grant of an extension.

From: Daniel Shmikler [mailto:DSshmikler@sperling-law.com]
Sent: Tuesday, April 08, 2008 2:15 PM
To: James G. Martignon
Subject: Indymac/Vish sur-sur-reply

Jim,

The other day in front of Judge Gottschall, when we asked for 14 days to file our reply to your sur-reply, I didn't realize that the date (April 17) was the day before a major summary judgment argument I have in another matter. The week after that is Passover, so we intend to ask the Court for an additional 14 days to file the brief. Do you guys agree to the extension?

Thanks,

Dan



Levenfeld Pearlstein is committed to our environment. Please join us and consider not printing this e-mail unless necessary.

In conformity with U.S. Treasury Department Circular 230, tax advice contained in this communication and any attachments is not intended to be used, and cannot be used, for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code, nor may any such tax advice be used to promote, market or recommend to any person any transaction or matter that is the subject of this communication and any attachments. The intended recipients of this communication and any attachments are not subject to any limitation on the disclosure of the tax treatment or tax structure of any transaction or matter that is the subject of this communication and any attachments.

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This message has been scanned for viruses and dangerous content by **MailScanner**, and is believed to be clean.

4/9/2008

CERTIFICATE OF SERVICE

I, Daniel Shmikler, an attorney, hereby certify that on April 9, 2008, I electronically filed **Defendant's Motion To Extend Time For Response To Plaintiff's Sur-Reply** with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following persons listed below:

Gary I. Blackman, Esq.
James G. Martignon, Esq.
Levenfeld Pearlstein, P.C.
2 North LaSalle Street
Suite 1300
Chicago, Illinois 60602

/s/Daniel A. Shmikler
Daniel A. Shmikler